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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

WYATT B. and NOAH F. by their next friend
Michelle McAllister; KYLIE R. and ALEC R.
by their next friend Kathleen Megill Strek;
UNIQUE L. by her next friend Annette Smith;
SIMON S. by his next friend Paul Aubry;
RUTH T. by her next friend Michelle Bartov;
BERNARD C. by his next friend Ksen Murry;
NAOMI B. by her next friend Kathleen
Megill Strek; and NORMAN N. by his next
friend Tracy Gregg, individually and on
behalf of all others similarly situated,

Case No. 6:19-cv-00556-AA

**DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' REBUTTAL WITNESS
STATEMENTS**

Plaintiffs,

v.

TINA KOTEK, Governor of Oregon in her
official capacity; FARIBORZ
PAKSERESHT, Director, Oregon Department
of Human Services in his official capacity;
APRILLE FLINT-GERNER, Director, Child
Welfare in her official capacity; and OREGON
DEPARTMENT OF HUMAN SERVICES,

Defendants.

GENERAL OBJECTIONS

1. Federal Rule of Evidence 401. Defendants object to plaintiffs' proffered testimony to the extent that it is not relevant to any claims or issues alleged in plaintiffs' complaint because the testimony has no tendency to make a fact more or less probable than it would be with the evidence and/or the testimony has no consequence in determining any claim or issue in this action.

2. Federal Rule of Evidence 403. Defendants object to plaintiffs' proffered testimony to the extent that its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the fact finder, undue delay, wasting time, or needlessly presenting cumulative evidence.

3. Federal Rule of Evidence 404(b): Defendants object to plaintiffs' proffered testimony to the extent that evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character evidenced by the crime, wrong, or act.

4. Federal Rule of Evidence 408: Defendants object to plaintiffs' proffered testimony to the extent that evidence of settlement agreements are inadmissible to prove defendants' liability in this case, including to prove that defendants were deliberately indifferent.

5. Federal Rule of Evidence 602: Defendants object to plaintiffs' proffered testimony to the extent that plaintiffs' witnesses lack personal knowledge of the matters to which they are testifying.

6. Federal Rule of Evidence 701: Defendants object to plaintiffs' proffered lay opinion testimony to the extent that it is not rationally based on the witnesses' perceptions, is not helpful to determining any fact at issue, and/or is based on scientific, technical, or other

specialized knowledge within the scope of Federal Rule of Evidence 702 and outside the personal knowledge of the lay witnesses.

7. Federal Rules of Evidence 801 & 802: Defendants object to plaintiffs' proffered testimony to the extent that it seeks to admit out-of-court statements offered to prove the truth of the matter asserted.

8. Federal Rules of Civil Procedure 37(c): Defendants object to plaintiffs' proffered testimony because the rebuttal witness statements do not describe the testimony the witnesses intend to give, instead providing only a list of topics. It is impossible for defendants to object to specific testimony. Plaintiffs must disclose the evidence they intend to introduce at trial, or it is subject to exclusion. Fed. R. Civ. P. 37(c).

9. Motions *in limine*. Defendants object to plaintiffs' proffered testimony for the same reasons and on the same bases set out in defendants' motions *in limine*, filed separately.

OBJECTIONS – WITNESS CATEGORIES

1. Lay witnesses. Defendants object to plaintiffs' proffered lay witness testimony to the extent that it relies on scientific, technical, or other specialized knowledge outside the scope of these witnesses' personal knowledge. Many of plaintiffs' lay witnesses' testimony covers subjects for which they have no personal knowledge and no expertise under Federal Rule of Evidence 702.

2. Fed. R. Civ. P. 26(a)(2)(A)(B). Defendants further object to plaintiffs' proffered expert witness testimony for the same reasons set out in defendants' *Daubert* motions, filed separately.

OBJECTIONS – INDIVIDUAL WITNESSES

1. Maggie Carlson (Attorney, Youth Rights & Justice), Fact Witness – Page 2

| Maggie Carlson | |
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| Testimony | Defendants' Objections |
| Rebuttal to defendants' lay witnesses' testimony regarding placement capacity and stability for children in foster care | FRE 602: lacks personal knowledge; FRE 701: improper lay witness opinion; FRE 802: hearsay; FRCP 37(c): exclusion for failure to disclose; <i>see also</i> defendants' motions <i>in limine</i> |
| The use of temporary lodging, its effects on children with disabilities, and children's experiences in temporary lodging | FRE 401: lack of relevance to claims and defenses at issue in this case; FRE 403: unduly prejudicial and misleading; FRE 408: evidence of settlements is inadmissible to prove liability; FRE 602: lacks personal knowledge; FRE 701: improper lay witness opinion; FRE 702: improper, undisclosed expert opinion; FRE 802: hearsay; FRCP 37(c): exclusion for failure to disclose; <i>see also</i> defendants' motions <i>in limine</i> |

2. Lisa Kay Williams (Supervising Attorney, Youth Rights & Justice), Fact Witness – Page 2

| Lisa Kay Williams | |
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| Testimony | Defendants' Objections |
| Rebuttal to defendants' lay witnesses' testimony regarding the disclosure of documents and information to juvenile attorneys | FRE 401: lacks relevance because it does not relate to any claim or defense; FRE 403: unduly prejudicial and misleading; FRE 602: witness lacks personal knowledge; FRE 802: hearsay; FRCP 37(c): exclusion for failure to disclose; <i>see also</i> defendants' motions <i>in limine</i> |

3. Alisha Overstreet (System of Care Advisory Counsel, M.S. Forensic Psychology), Fact Witness – Page 2

| Alisha Overstreet | |
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| Testimony | Defendants' Objections |
| Rebuttal to defendants' lay witnesses' testimony regarding the System of Care Advisory Council | FRE 401: lack of relevance to claims and defenses at issue in this case; FRE 403: unduly prejudicial and misleading; FRE 602: lacks personal knowledge; FRE 701: improper lay witness opinion; FRE 802: hearsay; FRCP 37(c): exclusion for failure to disclose; <i>see also</i> defendants' motions <i>in limine</i> |

DATED: May 3, 2024.

ELLEN ROSENBLUM
ATTORNEY GENERAL
FOR THE STATE OF OREGON

s/ Laura Salerno Owens

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